



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2022-0121; FRL-9823-01-R3]

Air Plan Approval; Pennsylvania; 2015 Ozone National Ambient Air Quality Standard

Nonattainment New Source Review Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve this state implementation plan (SIP) revision that will fulfill Pennsylvania's nonattainment new source review (NNSR) SIP element requirement for the 2015 8-hour ozone national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2022-0121 at <https://www.regulations.gov>, or via email to Opila.MaryCate@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT**

section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Justin Leary, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2189. Mr. Leary can also be reached via electronic mail at Leary.Justin@epa.gov.

SUPPLEMENTARY INFORMATION: On January 8, 2021, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision on behalf of the Commonwealth of Pennsylvania (Commonwealth or Pennsylvania) for its SIP. The revision comprises the NNSR Certification for the 2015 8-hour ozone NAAQS. Pennsylvania is certifying that the Commonwealth's federally approved nonattainment new source review regulation in 25 Pennsylvania Code of Regulations (Pa. Code) Chapter 127 applies statewide and covers the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area for the 2015 ozone NAAQS. Pennsylvania asserts that its nonattainment new source review program is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements" (SRR) for ozone and its precursors. See 83 FR 62998 (December 6, 2018).

I. Background

EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). 80 FR 65452 (October 26, 2015). Under EPA's regulation at 40 CFR 50.19 the 2015 8-hour ozone standard is obtained when the three-year average of the fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.070 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires that EPA designate as nonattainment any area that is violating the NAAQS based on the three most recent years of

ambient air quality data at the conclusion of the designation process. The Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment Area was designated nonattainment and classified as a marginal nonattainment area for the 2015 8-hour ozone NAAQS on August 3, 2018. Based on initial nonattainment designations for the 2015 8-hour ozone NAAQS, as well as the December 6, 2018, final SRR, Pennsylvania was required to develop a SIP revision addressing specific CAA requirements for the Philadelphia Area and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2015 8-hour ozone NAAQS (*i.e.*, August 3, 2021). See 83 FR 62998 (December 6, 2018). EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2015 8-hour ozone NAAQS is provided in Section II of this rulemaking action.

II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to Pennsylvania's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. The specific NNSR requirements for the 2015 8-hour ozone NAAQS are located in 40 CFR 51.160–165.

The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are located in 40 CFR 51.165. See 40 CFR 51.1314. Under the 2015 8-hour ozone NAAQS NNSR SIP requirements, the SIP for each ozone nonattainment area must contain NNSR provisions that: 1) set major source thresholds for oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(I)(i)–(iv); 2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); 3) consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); 4) consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); 5) set significant emissions rates for VOCs and NO_x as ozone precursors

pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); 6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(I)–(2); 7) provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); 8) set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9)(i)–(iii) (renumbered as (a)(9)(ii)–(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS); and 9) in meeting emissions offset requirement of paragraph (a)(3), the emission offsets obtained be for the same regulated NSR pollutant with the exception of direct fine particulate matter (PM_{2.5}) emissions and emission of precursors of PM_{2.5} pursuant 40 CFR 51.165(a)(11).

Pennsylvania's SIP approved NNSR program, established in the Pa. Code Rule 25 Pa. Code Chapter 127— *Construction, Modification, Reactivation, and Operation of Sources*, applies to the construction and modification of major stationary sources in nonattainment areas. In its October 30, 2017, SIP revision, Pennsylvania certifies that the version of 25 Pa. Code Chapter 127 in the SIP is at least as stringent as the Federal NNSR requirements for the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area. EPA last approved revisions to Pennsylvania's major NNSR SIP on February 22, 2019. In that action, EPA approved Pennsylvania's NNSR program under the 2008 8-hour ozone NAAQS and made PADEP's NNSR program consistent with Federal requirements. *See* 84 FR 5598 (February 22, 2019). The version of 25 Pa. Code Chapter 127 that is contained in the current SIP and covers the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area and is adequate to meet all applicable NNSR requirements for the 2015 8-hour ozone NAAQS found in 40 CFR 51.165, and the SRR.

III. Proposed Action

EPA's review of this material indicates that Pennsylvania's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. EPA is proposing to approve Pennsylvania's SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the

Philadelphia Area, which was submitted on January 8, 2020. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, approving Pennsylvania's 2015 8-hour ozone NAAQS Certification SIP revision for NNSR, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.